

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of Petition :
of :
THE CONDE NAST PUBLICATIONS INC. :
for redetermination of deficiencies :
of franchise tax under Article 9-A :
of the tax law for the calendar :
years 1967 to 1970, inclusive :

The Conde Nast Publications Inc. ("Conde Nast") having filed a petition for redetermination of deficiencies under Article 9-A of the tax law for the years 1967 to 1970, inclusive, and a hearing having been held at the office of the State Tax Commission, State Campus, Albany, New York, at which hearing J. R. Coughlin, Esq. of Counsel, J. Allison, Comptroller, P. Scherer, Accountant, D. R. Lucas and A. S. Pardoll appeared and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

(1) Conde Nast is engaged in the business of publishing several magazines. Advertising in the magazines was solicited and serviced throughout the United States from offices in New York, California, Illinois, Massachusetts, Ohio and Georgia. Subscription sales were serviced from an office maintained by the taxpayer in Boulder, Colorado. Newstand sales were distributed by Curtis Circulation Company. The magazines were printed by independent printers located in Dayton, Ohio and Des Moines, Iowa on printing presses owned by Conde Nast.

(2) The Corporation Tax Bureau, based on a field audit conducted by its New York City district office, issued statements of audit adjustment and notices of deficiency as follows:

	<u>1967</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>
Tax per field audit	\$192,289.41	280,159.11	278,285.56	127,825.14
Tax reported	143,454.00	217,546.00	232,684.00	114,049.00
Tax deficiency	48,835.41	62,613.11	45,601.56	13,776.14

Based on reports of Federal changes subsequently filed by the taxpayer on form CT-3360, statements of audit adjustment and additional notices of deficiency were issued as follows:

	<u>1967</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>
Tax deficiency	\$ 1,600.00	1,264.00	3,852.00	3,039.00

The sole item in dispute is the method of allocating revenues from advertising carried in the taxpayer's magazines. The taxpayer included in the numerator of the receipts factor the portion of such advertising revenues based on the ratio of circulation of the particular magazine within New York as compared to circulation of the magazine within and without New York (everywhere). The Corporation Tax Bureau adjusted the numerator of the receipts factor by including therein revenues from advertising contracts that were solicited and serviced by taxpayer's New York office. This involves those cases where the contract was negotiated through the New York office and the advertiser, directly or through its advertising agency, dealt with the New York office with respect to its requirements under the contract.

The receipts factor is one part of the three factor statutory formula consisting of (1) real and tangible personal property, (2) receipts and (3) wages. Business income is apportioned by a business allocation percentage consisting of the average of such three factors.

(3) With respect to allocation of receipts, Section 210.3(a) of the tax law provides that the receipts factor is to be determined by:

"(2) ascertaining the percentage which the receipts of the taxpayer . . . arising during such period from

(A) sales of its tangible personal property where shipments are made to points within this state,

(B) services performed within the state,

(C) rentals from property situated, and royalties from the use of patents or copyrights within the state, and

(D) all other business receipts earned within the state, bear to the total amount of the taxpayer's receipts, similarly computed, arising during such period from all sales of its tangible personal property, services, rentals, royalties and all other business transactions, whether within or without the state;"

The State Tax Commission hereby

DECIDES:

(A) Receipts from advertising contracts constitute other business receipts in accordance with Section 210.3(a) (2)(D) of the tax law. The receipts in question were earned in New York since the contracts were negotiated through the taxpayer's New York office and the advertisers' requirements under the contracts were handled through such office. The

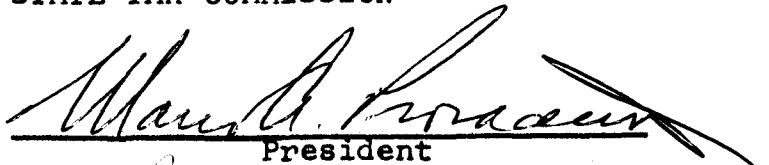
receipts were not received from the readers of the magazines, but from the advertisers, whose only contact with the taxpayer was the New York office. It is noted that the taxpayer filed income or franchise tax returns only in those states where it was actually doing business. There is no indication that the taxpayer filed returns in those states where its magazines were merely being circulated.

(B) The notices of deficiency as set forth in (2) above are affirmed, together with interest in accordance with Section 1084 of Article 27 of the tax law.

Dated: Albany, New York

this 25th day of February 1975.

STATE TAX COMMISSION


President


Commissioner


Commissioner